

NEBRASKA ADMINISTRATIVE CODE

Title 128 - Department of Environmental Quality

Chapter 5 - VARIANCES

001 Variances from classification as a solid waste.

001.01 In accordance with the standards and criteria in Section 001.02 and the procedures in Section 003 of this Chapter the Director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

001.01A Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Chapter 2, 002.07);

001.01B Materials that are reclaimed and then reused within the original production process in which they were generated;

001.01C Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

001.02 Standards and criteria for variance from classification as a solid waste.

001.02A The Director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Director's decision will be based on the following criteria:

001.02A1 The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

001.02A2 The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

001.02A3 The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

001.02A4 The extent to which the material is handled to minimize loss; and

001.02A5 Other relevant factors.

001.03 The Director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original primary production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

001.03A How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

001.03B The prevalence of the practice on an industry-wide basis;

001.03C The extent to which the material is handled before reclamation to minimize loss;

001.03D The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

001.03E The location of the reclamation operation in relation to the production process;

001.03F Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

001.03G Whether the person who generates the material also reclaims it; and

001.03H Other relevant factors.

001.04 The Director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

001.04A The degree of processing the material has undergone and the degree of further processing that is required;

001.04B The value of the material after it has been reclaimed;

001.04C The degree to which the reclaimed material is like an analogous raw material;

001.04D The extent to which an end market for the reclaimed material is guaranteed;

001.04E The extent to which the reclaimed material is handled to minimize loss; and

001.04F Other relevant factors.

002 Variance to be classified as a boiler. In accordance with the standards and criteria in Chapter 1, 013 and the procedures in Section 003 of this Chapter, the Director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in Chapter 1, 013 after considering the following criteria:

002.01 The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

002.02 The extent to which the combustion chamber and energy recovery equipment are of integral design;

002.03 The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

002.04 The extent to which exported energy is utilized;

002.05 The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

002.06 Other factors, as appropriate.

003 Procedures for variances from classification as a solid waste or to be classified as a boiler. The Director will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

003.01 The applicant must apply to the Director for the variance. The application must address the relevant criteria contained in Sections 001.02 or 002 of this Chapter.

003.02 The Director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler or boiler is located. The Director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at the Director's discretion. The Director will issue a final decision after receipt of comments and after the hearing (if any).

004 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

004.01 The Director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in Chapter 7, 003.04 should be regulated under Chapter 7, 004 through 006. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision the Director will consider the following factors:

004.01A The types of materials accumulated or stored and the amount accumulated or stored;

004.01B The method of accumulation or storage;

004.01C The length of time the materials have been accumulated or stored before being reclaimed;

004.01D Whether any contaminants are being released into the environment, or are likely to be so released; and

004.01E Other relevant factors.

004.02 The procedures for this decision are set forth in Section 005 of this Chapter.

005 Procedures for case-by-case regulation of hazardous waste recycling activities. The Director will use the following procedures when determining whether to regulate hazardous waste recycling activities described in Chapter 7, 003.04 under the provisions of Chapter 7, 004 through 006 rather than under the provisions of Chapter 7, 010:

005.01 If a generator is accumulating the waste, the Director will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Chapters 4, 9, and 10. The notice will become final in 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Director will hold a public hearing. The Director will provide notice of the hearing to the public and allow public participation at the hearing. The Director will issue a final order after the hearing stating whether or not compliance with Chapters 4, 9, and 10 is required. The order becomes effective 30 days after service of the decision unless the Director specifies a later date.

005.02 If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapters 12 through 15. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Director's decision, the challenge may be stated in the permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Director's determination. The question of whether the Director's decision was proper will remain open for consideration during the public comment period and in any subsequent hearing.

006 Variances from a treatment standard specified in Chapter 20.

006.01 Based on a petition filed by a generator or treater of hazardous waste, the Director may approve a site-specific variance from an applicable treatment standard specified in Chapter 20 if:

006.01A It is not physically possible to treat the waste to the level specified in the treatment standard, or by the method specified as the treatment standard. To show that this is the case, the petitioner must demonstrate that because the physical or chemical properties of the waste differ significantly from waste analyzed in developing the treatment standard, the waste cannot be treated to the specified level or by the specified method; or

006.01B It is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, the petitioner must either demonstrate that:

006.01B1 Treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in

combustion of large amounts of mildly contaminated environmental media where the treatment standard is not based on combustion of such media); or

006.01B2 For remediation waste only, treatment to the specified level or by the specified method is environmentally inappropriate because it would likely discourage aggressive remediation.

006.01C For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) the concentrations necessary to minimize short- and long-term threats to human health and the environment. Treatment variances approved under this paragraph must:

006.01C1 At a minimum, impose alternative land disposal restriction treatment standards that, using a reasonable maximum exposure scenario:

006.01C1(a) For carcinogens, achieve constituent concentrations that result in the total excess risk to an individual exposed over a lifetime generally falling within a range from 10^{-4} to 10^{-6} ; and

006.01C1(b) For constituents with non-carcinogenic effects, achieve constituent concentrations that an individual could be exposed to on a daily basis without appreciable risk of deleterious effect during a lifetime.

006.01C2 Not consider post-land-disposal controls.

006.01D For contaminated soil only, treatment to the level or by the method specified in the soil treatment standards would result in concentrations of hazardous constituents that are below (i.e., lower than) natural background concentrations at the site where the contaminated soil will land disposed.

006.01E Public notice and a reasonable opportunity for public comment must be provided before granting or denying a petition.

006.02 Each application for a site-specific variance from a treatment standard must include the information in Chapter 6, 001.02A through 001.02D.

006.03 After receiving an application for a site-specific variance from a treatment standard, the Director may request any additional information or samples which may be required to evaluate the application.

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006.04 A generator, treatment facility, or disposal facility that is managing a waste covered by a site-specific variance from a treatment standard must comply with the waste analysis requirements for restricted wastes found under Chapter 20, 005.

006.05 During the application review process, the applicant for a site-specific variance must comply with all restrictions on land disposal under Chapter 20 once the effective date for the waste has been reached.

006.06 For all variances, the petitioner must also demonstrate that compliance with any given treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. In evaluating this demonstration, the Department may take into account whether a treatment variance should be approved if the subject waste is to be used in a manner constituting disposal pursuant to Chapter 7, 007.01 through 007.04.

Enabling Legislation: Neb. Rev. Stat. §81-1505(13), 81-1513

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